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common law

Common law is law that is derived from judicial decisions instead of from statutes. American courts originally fashioned common law rules based on English common law until the American legal system was sufficiently mature to create common law rules either from direct precedent or by analogy to comparable areas of decided law. In the 2019 Supreme Court case of *Gamble v. United States*, Justice Thomas issued a concurring opinion discussing common law and, in particular, the role of stare decisis in a common law system. Though most common law is found at the state level, there is a limited body of federal common law--that is, rules created and applied by federal courts absent any controlling federal statute. In the 2020 Supreme Court opinion *Rodriguez v. FDIC*, a unanimous Court quoted an earlier decision to explain that federal "common lawmaking must be 'necessary to protect uniquely federal interests'" in striking down a federal common law rule addressing the distribution of corporate tax refunds.

At the state level, legislatures often subsequently codify common law rules from the courts of their state, either to give the rule the permanence afforded by a statute, to modify it somehow (by either expanding or restricting the scope of the common law rule, for example) or to replace the outcome entirely with legislation. An example that gained national attention was the 2018 California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court*, which articulated a three-part test for determining whether California workers were independent contractors or employees for purposes of California labor law. The California Legislature responded by creating a new section of the Labor Code, 2750.3, which codified and expanded on the *Dynamex* holding and went into effect on January 1, 2020. Note that, like many statutes responding to a common law rule, California Labor Code Section 2750.3 specifically mentions the *Dynamex* holding.

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